

REMARKS

In the Office Action dated March 30, 2004, claims 1 and 2 stand rejected under 35 U.S.C. 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter, which Applicants regard as the invention. Claims 1, 3, and 5 stand rejected under 35 U.S.C. 102(b) as being anticipated by European Patent Publication No. 0,521,205 to Cain et al. (hereinafter "Cain"). Claims 1, 3, 5, and 6 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,283,436 to Soeters et al. (hereinafter "Soeters"). Claims 1 and 3-6 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Soeters. Claims 1 and 3 stand rejected under 35 U.S.C. 102(b) as being anticipated by WO 98/30108 to Willcocks et al. (hereinafter "Willcocks"). Finally, claim 2 stands rejected under 35 U.S.C. 103(a) as being anticipated over Willcocks.

In the specification, Applicants have amended the paragraphs beginning at page 4, line 7 and page 4, line 27 to insert the full citations for the references listed at page 9. Applicants will submit in due time a Supplemental Information Disclosure Statement containing these references. Additionally, Applicants have amended the paragraph beginning at page 2, line 11 to clarify that [St] and [Ar] refer to the concentration of stearic acid and arachidic acid, respectively, as present in the "free and in the ester form." The amendment does not comprise new matter since the additional words had been omitted in the translation to English.

In response to the Examiner's rejections, Applicants have amended claim 1 to more particularly point out and distinctly claim the subject matter regarded as the invention by inserting the words "liquid" and "molten" to describe the seed material. Support for these

limitations are found in the specification at page 2, lines 14-17, which state that the “critical temperature is the temperature at which all forms of crystalline fat have changed to the molten state.” Claim 1 also has been amended to utilize the active voice by replacing the word “preparing” with the phrase “the preparation of.” In addition, claims 2-6 have been amended to be more consistent with claim 1, and therefore, the scope of the claims remains unaltered. Finally, claims 1-6 have been amended to place the claims in a format more consistent with U.S. practice. Accordingly, Applicants have not added new matter. Entry of the amendments to claims 1-6 is accordingly in order and is respectfully requested.

Rejection of Claims 1 and 2 under 35 U.S.C. § 112, Second Paragraph

Referring to page 3 of the action, claims 1 and 2 have been rejected as being indefinite for failing to particularly point out and distinctly claim the subject matter, which Applicants regard as the invention. The Examiner, in support of her rejection of claim 2, stated that it is unclear as to what the “liquid substance” refers. In view of the amendment of claims 1-2 above, it is clear that the “cooled, molten mixture” is the liquid seed material. Applicants submit that claims 1 and 2 are not susceptible to rejection under 35 U.S.C. § 112, second paragraph. Withdrawal of the rejection of claims 1 and 2 is respectfully requested.

Rejection of Claims under 35 U.S.C. 102(b)

Referring to page 4 of the action, claims 1, 3, and 5 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Cain.

The present application discloses a method for producing a chocolate, wherein a cooled chocolate mass is mixed with a liquid seed material, the seed material comprising a cooled,

molten mixture at a temperature above 30°C. The cooled, molten mixture does not exceed a critical temperature and substantially does not contain any crystalline material in the β' phase. Due to the liquid state of the seed material, the seed material can be homogeneously mixed with the liquid chocolate mass. Additionally, using a larger quantity of the liquid seed material allows for a cooling down of the chocolate mass without an increase in the formation of undesirable types of crystals. Furthermore, the liquid seed material can be obtained from the mixture present immediately before the chocolate solidifies. Consequently, the seed material can have exactly the same composition as the liquid chocolate mass, thereby eliminating the need for a carefully monitored separate process to prepare the seed material.

To the contrary, Cain discloses a process for the production of tempered confectionery by external addition of seeds, wherein the seeds are added continuously as a slurry, which is prepared by adding seed crystals (size 10-70 μm , β -stable) to melted fat at a temperature at which the seeds do not melt. See page 2, lines 36-38 and page 3, lines 25-26. One skilled in the art will clearly see that the seed material is not a liquid seed material formed of a cooled, molten mixture. Accordingly, Cain does not disclose Applicants' claimed invention. Claim 1 is respectfully submitted to be patentable over Cain. Dependent claims 3 and 5 are submitted to be patentable as further limiting the allowable subject matter claimed in claim 1. Withdrawal of the rejection of claims 1, 3, and 5 is respectfully requested.

In addition, claims 1, 3, 5, and 6 have been rejected as being anticipated by Soeters. See Office Action at page 5. As with Cain, Soeters does not use a cooled, molten seed material. Rather, Soeters discloses the manufacture of chocolate wherein tempered chocolate is seeded

with 0.1% of stabilized crystals from the original pre-conched mass. See column 14, lines 15-21. Accordingly, claim 1 is respectfully submitted to be patentable over Soeters, as are claims 3, 5, and 6, which either directly or indirectly depend from claim 1 and further limit the subject matter being claimed therein. Withdrawal of the rejection of claims 1, 3, 5, and 6 is respectfully requested.

Finally, claims 1 and 3 are rejected as being anticipated by Willcocks. See Office Action at page 6. For similar reasons given above, claim 1 is respectfully submitted to be patentable over Willcocks. Willcocks discloses a method of processing a chocolate composition containing solid particles dispersed throughout a continuous fat phase having a solidification temperature. One skilled in the art will clearly see that Willcocks uses a solid seed material. See page 50 lines 11-26 and page 54 line 29 to page 55 line 20. Moreover, Willcocks reports viscosity problems unless the seed agents are added in an amount less than 6 wt%. See p. 53 lines 5-7. Accordingly, Willcocks does not disclose Applicants' claimed invention. Dependent claim 3 is submitted to be patentable as further limiting the allowable subject matter claimed in claim 1. Withdrawal of the rejection of claims 1 and 3 is respectfully requested.

Rejection of Claims under 35 U.S.C. § 103(a)

Referring to pages 5-6 of the action, claims 1 and 3-6 have been rejected as being obvious over Soeters. In response, Applicants respectfully submit that Soeters neither teaches nor suggests the invention set forth in claim 1. As stated previously, claim 1, as amended, requires a liquid seed material comprising a cooled, molten mixture. This liquid state allows the seed material to be mixed homogeneously with the liquid chocolate mass. Soeters does not teach

or suggest this limitation. Soeters fails to teach or suggest a liquid seed material comprising a cooled, molten mixture and therefore does not provide any indication of the unexpected result provided by Applicants' claimed seed material. Consequently, as Soeters does not render claim 1 *prima facie obvious*, claims 3-6, either directly or indirectly dependent from claim 1, are submitted to be patentable as further limiting the allowable subject matter claimed therein.

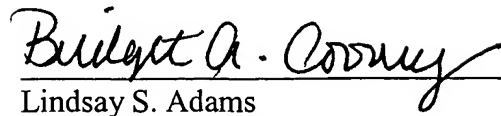
Claim 2 has been rejected as being obvious over Willcocks. See Office Action at pages 6-7. As with Soeters, Willcocks fails to teaches or suggest a liquid seed material comprising a cooled, molten mixture and therefore does not provide any indication of the unexpected result provided by Applicants' claimed seed material. Consequently, as Willcocks does not render claim 1 *prima facie obvious*, claim 2, directly dependent from claim 1, is submitted to be patentable as further limiting the allowable subject matter claimed therein.

Accordingly, neither Soeters nor Willcocks provides coverage for the claimed liquid seed material comprising a cooled, molten mixture. Thus, withdrawal of the rejection of claims 1-6 is respectfully requested.

In view of the above, Applicants respectfully submit that the application is in condition for allowance, which action is earnestly solicited. If for any reason the application is not deemed in condition for allowance, the Examiner is respectfully requested to contact the undersigned attorney so that additional amendments may be entered as necessary.

Applicants have enclosed a check in the amount of \$55.00 for the one month extension. However, if any additional fees are due, please charge such sums to our Deposit Account 50-1145.

Respectfully submitted,



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